

**FEE RECEIVED**

OCT 23 2003

**SURFACE  
TRANSPORTATION BOARD**



209184



October 22, 2003

VIA U.P.S. OVERNIGHT DELIVERY

Mr. Vernon Williams, Secretary  
Surface Transportation Board  
Section of Environmental Analysis  
1925 "K" St., N.W., Room 504  
Washington, DC 20423-0001

**FILED**

OCT 23 2003

**SURFACE  
TRANSPORTATION BOARD**

**RE: Proposed Abandonment of the Milpitas Subdivision from M.P.  
0.0 near Clark Drive at Niles Junction to M.P. 5.38 near  
Washington Boulevard in and near Fremont, Alameda County,  
California; STB Docket No. AB-33 (Sub-No. 211X)**

Dear Mr. Williams:

Pursuant to the Board's exemption procedures for abandonment of rail lines with no local business for at least two years, (49 C.F.R. 1152.50), enclosed are an original and ten (10) copies of a verified Notice of Exemption, including a Certificate of Service and Publication.

Please file the Notice of Exemption in Docket No. AB-33(Sub-No. 211X). Enclosed is a check for \$2,800.00 for the filing fee. Three (3) computer disks, in WordPerfect format, are included for the Board's use.

ENTERED  
Office of Proceedings

OCT 23 2003

Part of  
Public Record

Sincerely yours,

Enclosures

cc: All parties of record

O:\ABANDONMENT\33-211X\STBNOE2.wpd

Mack H. Shumate, Jr.  
Senior General Attorney, Law Department

UNION PACIFIC RAILROAD  
101 N. Wacker Dr., Rm. 1920, Chicago, IL 60606-1718  
ph. (312) 777-2055 fx. (312) 777-2065

01

**FILED RECEIVED**  
OCT 23 2003  
SURFACE  
TRANSPORTATION BOARD

Before the  
SURFACE TRANSPORTATION BOARD



Docket No. AB-33 (Sub-No. 211X)

UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT EXEMPTION --  
IN ALAMEDA COUNTY, CALIFORNIA  
(MILPITAS SUBDIVISION)

**FILED**  
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SURFACE  
TRANSPORTATION BOARD

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Public Record

**NOTICE OF EXEMPTION**

UNION PACIFIC RAILROAD COMPANY

Mack H. Shumate, Jr., Senior General Attorney  
101 North Wacker Drive, Room 1920  
Chicago, Illinois 60606  
(312) 777-2055  
(312) 777-2065 FAX

Dated: October 22, 2003  
Filed: October 23, 2003

**FILE RECEIVED**  
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SURFACE  
TRANSPORTATION BOARD

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OCT 23 2003

SURFACE  
TRANSPORTATION BOARD

Before the

**SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No. 211X)

**UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT EXEMPTION --  
IN ALAMEDA COUNTY, CALIFORNIA  
(MILPITAS SUBDIVISION)**



ENTERED  
Office of Proceedings

OCT 23 2003

Part of  
Public Record

**NOTICE OF EXEMPTION**

Union Pacific Railroad Company ("UP") submits this verified Notice of Exemption pursuant to 49 § C.F.R. 1152, Subpart F -- Exempt Abandonments and Discontinuances of Service and Trackage Rights, for an exempt abandonment of the Milpitas Subdivision from milepost 0.00 near Clark Drive at Niles Junction to milepost 5.38 near Washington Boulevard, a distance of 5.38 miles in and near Fremont, Alameda County, California, (the "Line"). From milepost 2.61 to the end of the proposed abandonment at milepost 5.38, Union Pacific Railroad Company ("UP") holds a freight easement and trackage rights over track and right-of-way owned by the Santa Clara Valley Transportation Authority ("UTA"), which made its purchase from UP in December, 2002.

**Proposed Consummation Date: 49 C.F.R. § 1152.50 (d)(2)**

The abandonment is proposed to be consummated on or after December 12, 2003 (at least 50 days after filing the Notice of Exemption).

**Certification: 49 C.F.R. 1152.50(b)**

UP certifies that no local traffic has moved over the Line for at least two years; and that no formal complaint filed by a user of rail service on the Line (or filed by a state or local governmental entity acting on behalf of such user) regarding cessation of service over the Line either is pending with this Board or any U.S. District Court or has been decided in favor of the complainant within the two-year period. The Line has not been used as an overhead route for the past two (2) years.

**Additional Information Required: 49 C.F.R. 1152.22(a)(1)-(4), (7)-(8) and (e)(4)**

(a) General.

(a)(1) The railroads' exact name is Union Pacific Railroad Company.

(a)(2) UP is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

(a)(3) UP intends to abandon the Line from milepost 0.00 near Clark Drive at Niles Junction to milepost 5.38 near Washington Boulevard, a distance of 5.38 miles. The Line is located in and near Fremont, Alameda County, California.

(a)(4) A map showing the location of the Line in conjunction with other rail lines, highways and major roads in the area is attached hereto as **Exhibit A** and hereby made a part hereof.

(a)(7) The representative to whom correspondence regarding this abandonment should be sent is:

Mack H. Shumate, Jr., Senior General Attorney  
Union Pacific Railroad Company  
101 North Wacker Drive, Room 1920  
Chicago, Illinois 60606  
(312) 777-2055  
(312) 777-2065 FAX

(a)(8) ZIP Code. The Line traverses U. S. Postal Service Zip Codes 94536, 94538 and 94539.

(e)(4) Rural and Community Impact. The Line was constructed by the Western Pacific Railroad in 1921. The Line is primarily built with 119 pound welded rail with less than one mile of 100 pound jointed rail. There appears to be no reasonable alternative to the abandonment. No local traffic has moved over the Line in the past two years, and there is no overhead traffic on the Line.

Based on information in the Applicant's possession, the Line proposed for abandonment does not contain federally granted right-of-way. The title to the property in the proposed abandonment is non-reversionary. The property includes a portion of right-of-way that was sold by UP to the VTA in December, 2002 for future extension of Bay Area Rapid Transit ("BART"). UP retained a freight easement which it now wishes to abandon. The southern part of the right-of-way will be used for passenger light rail purposes. The portion of the right-of-way from Niles Junction to Paseo Padre Parkway was not included in the sale to VTA and may be suitable for recreational purposes. In some instances UP property may be used in conjunction with development of adjacent ownership or sold to adjacent homeowners. There will be no effect on regional or local

transportation systems and patterns and no diversion of traffic to other transportation systems or modes. Except for the minimal overhead traffic which has moved over the Line, the subject Line has not been used for freight traffic for at least two years. After abandonment all overhead traffic will move over an adjacent parallel rail route on the UP which is no more than one half (½) mile from the Line.

Any documentation so related to the Line, including real estate documentation relating to the Line in UP's possession, will be made available to those requesting it.

#### **Labor Protection**

The interests of railroad employees will be protected by the conditions discussed in Oregon Short Line Railroad Co. -- Abandonment -- Goshen , 360 ICC 91 (1979).

#### **Certifications**

Attached hereto as **Exhibit B** and hereby made a part hereof is a Certificate of Service and Publication pursuant to the notice requirements of 49 C.F.R. §§ 1152.50(d)(1), 1105.11 and 1105.12.

#### **Environmental and Historic Report**

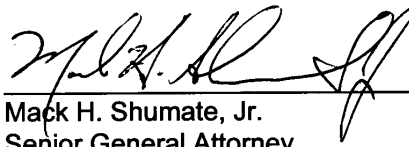
A copy of the Transmittal Letter of UP's Combined Environmental and Historic report containing the information required by 49 C.F.R. §§ 1105.7 (e) and 1105.8, and delivered in accordance with 49 C.F.R. 1105.11, is attached hereto as **Exhibit C** and hereby made a part hereof. The original and ten (10) copies were sent

to Ms. Victoria Rutson, Section of Environmental Analysis (SEA), on September 19, 2003. A copy of a letter from the Office of Historic Preservation for the state of California dated October 14, 2003 is attached hereto as Exhibit "D" and hereby made a part hereof. This letter indicates that the proposed abandonment does not involve historic properties.

Dated this 22nd day of October, 2003.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

A handwritten signature in black ink, appearing to read "Mack H. Shumate, Jr.", is written over a horizontal line.

Mack H. Shumate, Jr.  
Senior General Attorney  
101 North Wacker Drive, Room 1920  
Chicago, Illinois 60606  
(312) 777-2055  
(312) 777-2065 FAX

**VERIFICATION**

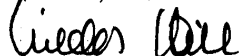
STATE OF NEBRASKA    )  
                                  ) ss:  
COUNTY OF DOUGLAS    )

I, RAYMOND E. ALLAMONG, JR., Manager Rail Line Planning of Union Pacific Railroad Company, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing document and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Union Pacific Railroad Company. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, I know that these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Omaha, Nebraska, this 21st day of October, 2003.

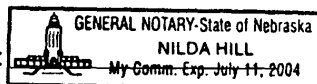
  
Raymond E. Allamong, Jr.

SUBSCRIBED AND SWORN TO  
before me this 21st day of  
October, 2003.



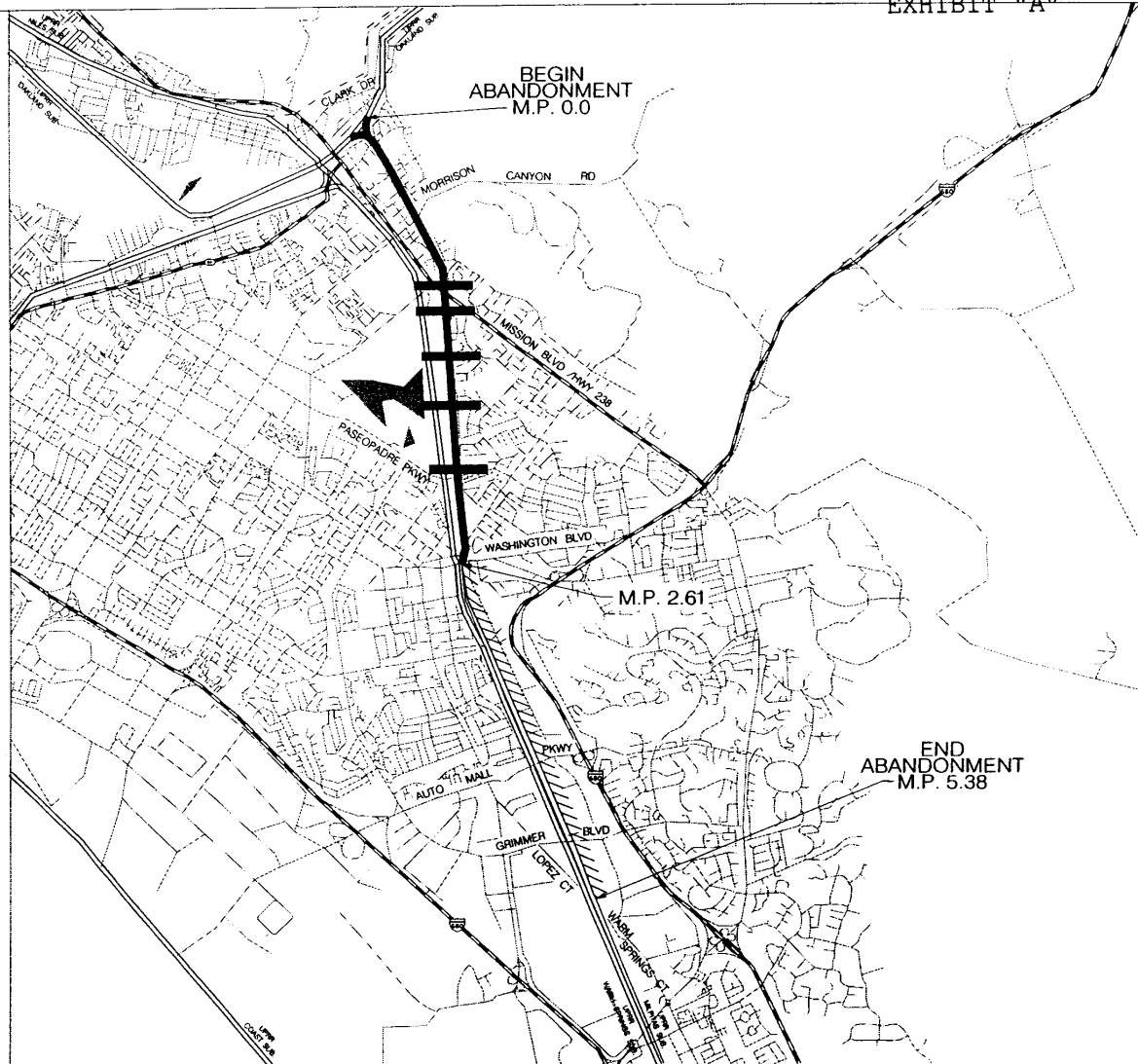
Notary Public

My Commission expires:



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BRIDGE NO.	BRIDGE TYPE	TOTAL LENGTH	DATE
1.19	1 SPAN TPTOD	15'	UNKNOWN
1.35	1 SPAN RCS - 1 SPAN CEB	64'	1921
1.69	3 SPAN TPT	45'	UNKNOWN
2.00	3 SPAN TST	44'	UNKNOWN
2.58	2 SPAN TPTOD	30'	UNKNOWN - >50 YRS

## LEGEND

- UPRR LINES TO BE ABANDONED
- UPRR TRACKAGE RIGHTS OVER SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
- OTHER UPRR LINES
- OTHER RAILROADS
- PRINCIPAL HIGHWAYS
- OTHER ROADS
- 50+ YEAR OLD STRUCTURES

## MILPITAS SUBDIVISION

MP 0.0 TO MP 5.38  
TOTAL OF 5.38 MILES  
IN ALAMEDA COUNTY, CALIFORNIA

UNION PACIFIC RAILROAD CO.

MILPITAS SUBDIVISION

NILES JCT. TO WARM SPRINGS, CALIFORNIA  
INCLUDING 50+ YEAR OLD STRUCTURES

SCALE MILES

FILE: Q:\abandonments\ab0336\_milpitas.dgn

DATE: 08-Sep-03 14:50

**DOCKET NO. AB-33 (SUB-NO. 211X)**  
**Milpitas Subdivision in Alameda County, CA**

**CERTIFICATE OF SERVICE AND PUBLICATION**

**49 C.F.R. § 1152.50(d)(1) - Notice**

The undersigned certifies that on October 13, 2003 (at least 10 days before a Notice of Exemption is filed), written notice was given of Union Pacific's intent to use the exemption notice procedure to abandon the Milpitas Subdivision in Alameda County, California in Docket No. AB-33 (Sub-No. 211X). Written notice (a copy of which is attached hereto as Attachment 1) was served on the following:

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

National Park Service  
William D. Shaddox  
Chief, Land Resources Division  
1849 "C" St., N.W., #MS3540  
Washington, DC 20240

U.S. Department of Agriculture  
Chief of the Forest Service  
4th Flr. N.W., Auditors Bldg.  
14th St. & Independence Ave., SW  
Washington, DC 20250

Military Traffic Management Command  
Transportation Engr. Agency  
Railroads for National Defense  
720 Thimble Shoals Blvd., Su.130  
Newport News, VA 23606-2574

**49 C.F.R. § 1105.11 - Transmittal Letter For Applicant's Report**

The undersigned certifies that on September 22, 2003 (at least 20 days before a Notice of Exemption is filed), a Combined Environmental and Historic Report

pursuant to 49 C.F.R. §§ 1105.7 and 1105.8 was served in Docket No. AB-33 (Sub-No. 211X) for abandonment of the Milpitas Subdivision in Alameda County, California on the following:

- (1) State Clearinghouse (or alternate)
- (2) State Environmental Protection Agency
- (3) State Coastal Zone Management Agency
- (4) Head of each County
- (5) U.S. Environmental Protection Agency (regional office)
- (6) U.S. Fish and Wildlife Service
- (7) U.S. Army Corps of Engineers
- (8) National Park Service
- (9) U.S. Natural Resources Conservation Service
- (10) The National Geodetic Survey
- (11) State Historic Preservation Office
- (12) Other Agencies Consulted (as listed)

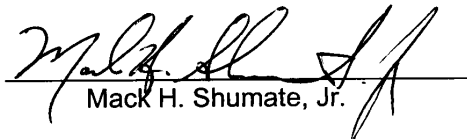
(The Certificate of Service attached to the Combined Environmental and Historic Report lists the names and addresses of the federal, state and local agencies served.)

**49 C.F.R. § 1105.12 - Newspaper Notice**

The undersigned further certifies that a "Notice of Intent to Abandon or to Discontinue Rail Service" was published in the form prescribed by the Board for a Notice of Exemption. The notice was published one time in a major newspaper in the county in which the Line is located as follows:

<u>County</u>	<u>Newspaper</u>	<u>Date</u>
Alameda	<i>Fremont-Newark Argus</i>	October 14, 2003

Dated this 23rd day of October, 2003.

  
Mack H. Shumate, Jr.

11

ATTACHMENT 1 to EXHIBIT "B"



October 13, 2003

California Public Utilities  
Commission  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

National Park Service  
William D. Shaddox  
Chief, Land Resources Division  
1849 "C" St., N.W., #MS3540  
Washington, DC 20240

U.S. Department of Agriculture  
Chief of the Forest Service  
4th Flr. N.W., Auditors Bldg.  
14th St. & Independence Ave., SW  
Washington, DC 20250

Military Traffic Management Command  
Transportation Engr. Agency  
Railroads for National Defense  
720 Thimble Shoals Blvd., Su.130  
Newport News, VA 23606-2574

**RE: Docket No. AB-33 (Sub-No. 211X), Union Pacific Railroad Company  
- Abandonment - In Alameda County, California (Milpitas  
Subdivision from Milepost 0.0 near Clark Drive at Niles Junction  
to Milepost 5.38 near Washington Boulevard in Warm Springs,  
California)**

Dear Sirs:

This is notice that Union Pacific Railroad Company ("UP") expects to be filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority for an exempt abandonment of the Milpitas Subdivision from milepost 0.0 near Clark Drive at Niles Junction to milepost 5.38 near Washington Boulevard in Warm Springs, a distance of 5.38 miles, in Alameda County, California ( the "Line").

The Line traverses U. S. Postal Service Zip Codes 94536, 94538 and 94539. The proceeding will be docketed as No. AB-33 (Sub-No. 211X).

The "no business" exemption procedure will be used to abandon the Line, pursuant to the abandonment regulations of the Surface Transportation Board at 49 C.F.R. Section 1152.50. No local traffic has moved over the Line in at least two years and all overhead traffic (which there is none) on the Line can be rerouted. A Notice of Exemption will be filed with the Surface Transportation Board on or after October 23, 2003.

Based on information in our possession, the Line does not contain federally granted rights-of-way. Any documentation in the Railroad's possession will be made available promptly to those requesting it.

A map showing the Line to be abandoned is attached, for your information as Attachment 1.

Attachment

cc: *Ray Allamano*

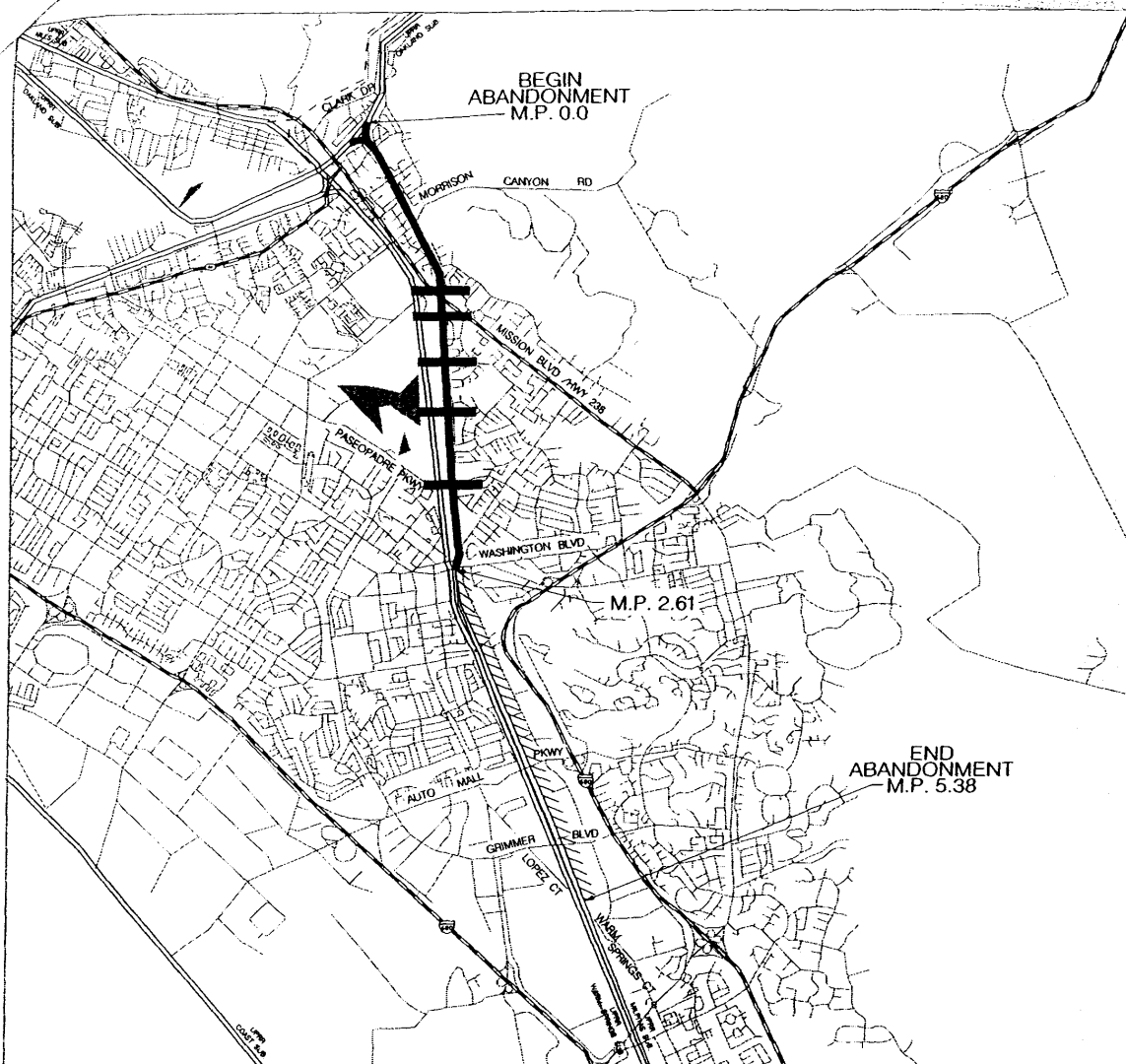
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Sincerely,

A handwritten signature in dark ink, appearing to read "Mark H. Shumate, Jr." followed by a stylized flourish.

Mark H. Shumate, Jr.  
Senior General Attorney, Law Department

UNION PACIFIC RAILROAD  
101 N. Wacker Dr., Rm. 1920, Chicago, IL 60606-1718  
ph. (312) 777-2055 fx. (312) 777-2065



BRIDGE NO.	BRIDGE TYPE	TOTAL LENGTH	DATE
1.23	1 SPAN TPTBD	15'	UNKNOWN
1.39	1 SPAN TPTBD	32'	1921
1.73	1 SPAN TPTBD	45'	UNKNOWN
2.03	1 SPAN TPTBD	15'	UNKNOWN
2.59	1 SPAN TPTBD	22'	UNKNOWN - > 50 YRS

## LEGEND

- UPRR LINES TO BE ABANDONED
- UPRR TRACKAGE RIGHTS OVER SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
- OTHER UPRR LINES
- OTHER RAILROADS
- PRINCIPAL HIGHWAYS
- OTHER ROADS
- 50+ YEAR OLD STRUCTURES

## MILPITAS SUBDIVISION

MP 0.0 TO MP 5.38  
TOTAL OF 5.38 MILES  
IN ALAMEDA COUNTY, CALIFORNIA

## UNION PACIFIC RAILROAD CO.

## MILPITAS SUBDIVISION

MILES JCT. TO WARM SPRINGS, CALIFORNIA

INCLUDING 50+ YEAR OLD STRUCTURES

SCALE MILES

FILE: q:\abandonments\ab0336\_milpitas.dgn

DATE: 26-Jun-03 13:41



September 19, 2003

**VIA U.P.S. OVERNIGHT**

Surface Transportation Board  
Section of Environmental Analysis  
1925 "K" St., N.W., Room 504  
Washington, DC 20423-0001

**Attention:** Victoria Rutson

**RE: Proposed Abandonment of the Milpitas Subdivision from M. P. 0.0 near Clark Drive at Niles Junction to M. P. 5.38 near Washington Boulevard in and near Fremont, Alameda County, California; STB Docket No. AB-33 (Sub-No. 211X)**

Dear Ms. Rutson:

Enclosed for filing in the above-referenced docket is the original and ten (10) copies of a Combined Environmental and Historic Report prepared pursuant to 49 C.F.R. §1105.7 and §1105.8, with a Certificate of Service, and a transmittal letter pursuant to 49 C.F.R. §1105.11.

*Notice*  
Union Pacific anticipates filing a ~~Petition~~ for Exemption in this matter on or after November 7, 2003.

Sincerely,

A handwritten signature in black ink, appearing to read "Mack H. Shumate, Jr.", written over a horizontal line.

Enclosures

O:\ABANDONMENTS\33-211X\STB-EHR.wpd

Mack H. Shumate, Jr.  
Senior General Attorney, Law Department

UNION PACIFIC RAILROAD  
101 N. Wacker Dr., Rm. 1920, Chicago, IL 60606-1718  
ph. (312) 777-2055 fx. (312) 777-2065

CERTIFICATE OF SERVICE  
OF THE  
COMBINED ENVIRONMENTAL AND HISTORIC REPORT

The undersigned hereby certifies that a copy of the foregoing Combined Environmental and Historic Report in Docket No. AB-33 (Sub-No. 211X), the Milpitas Subdivision in Alameda County, California was served by first class mail on the 19th day of September, 2003 on the following:

**State Clearinghouse (or alternate):**

Office of Planning and Research  
1400 Tenth Street  
Sacramento, CA 95814

**State Environmental Protection Agency:**

California Environmental Protection Agency  
1001 I Street  
Sacramento, CA 95814

**State Coastal Zone Management Agency  
(if applicable):**

California Coastal Commission  
45 Fremont Street  
Suite 2000  
San Francisco, CA 94105-2219

**Head of each County:**

Alameda County Supervisors  
County Courthouse  
1221 Oak Street, Suite 536  
Oakland, CA 94612

**Environmental Protection Agency  
(regional office):**

U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

**U.S. Fish and Wildlife:**

U.S. Fish & Wildlife Service, Region 1  
911 NE 11th Avenue  
Portland, OR 97232-4181

**U.S. Army Corps of Engineers:**

U.S. Army Engineer District  
Sacramento  
1325 J Street  
Sacramento, CA 95814

**National Park Service:**

William D. Shaddox  
Chief, Land Resources Division  
National Park Service  
Department of the Interior  
1849 "C" St., N.W., #MS2540  
Washington, D.C. 20240

**U.S. Natural Resources Conservation  
Service:**

State Conservationist  
Natural Resource Conservation Service  
430 G Street, #4164  
Davis, CA 95616-4164

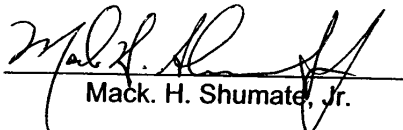
**National Geodetic Survey:**

National Geodetic Survey  
Edward J. McKay, Chief  
Spatial Reference System Division  
NOAA N/NGS2  
1315 E-W Highway  
Silver Spring, MD 20910-3282

**State Historic Preservation Office:**

California Department of Parks and Recreation  
Office of Historic Preservation  
P. O. Box 942896  
Sacramento, CA 94296-0001

Dated this 19th day of September, 2003.

  
Mack. H. Shumate, Jr.

**OFFICE OF HISTORIC PRESERVATION  
DEPARTMENT OF PARKS AND RECREATION**

P.O. BOX 942896  
SACRAMENTO, CA 94296-0001  
(916) 653-6624 Fax: (916) 653-9824  
calshpo@mail2.quiknet.com



October 14, 2003

REPLY TO: STB030915A

Charles W. Saylor, Director  
Legal Support Services  
Union Pacific Railroad  
1416 Dodge Street  
OMAHA NB 68179

Re: Union Pacific Railroad Track Abandonment, Post Mile 0.0 near Clark Drive at  
Niles Junction to Post Mile 5.38 near Washington Boulevard in Warm Springs,  
Alameda County.

Dear Mr. Saylor:

Thank you for submitting to our office, on behalf of the Surface Transportation Board (STB), your September 11, 2003 letter and supporting documentation regarding the proposed abandonment of railroad track property belonging to the Union Pacific Railroad (UPRR) from Post Mile (P.M.) 0.0 to P.M. 5.38 in the town of Warm Springs, Alameda County. The proposed project would include the abandonment of railroad tracks, including track ties, and rails within the alignment noted above. The project Area of Potential Effects (APE) is the alignment right of way within the aforementioned post mile markers. The APE appears adequate and meets the definitions set forth in 36 CFR 800.16(d). The bridge structures that are 50 years of age or older that are located within the project APE include those located at P.M. 1.19, P.M. 1.35, P.M. 1.69, P.M. 2.00, and P.M. 2.58.

STB is seeking my comments on its determination of the eligibility of the aforementioned bridge structures for inclusion on the National Register of Historic Places (NRHP) in accordance with 36 CFR 800, regulations implementing Section 106 of the National Historic Preservation Act. STB is also seeking my comments on its determination of the effects the proposed project will have on historic properties in accordance with 36 CFR 800. Our review of the submitted documentation leads me to concur with STB's determination that none of the aforementioned structures is eligible for inclusion on the NRHP under any of the criteria established by 36 CFR 60.4. The properties have no strong associations with significant historical events or persons and are not examples of outstanding engineering design or function. On the basis of these comments, I can now concur with STB's determination that the proposed project, as described, will not involve historic properties. Accordingly, STB has fulfilled its responsibilities pursuant to 36 CFR 800. Please note, however, that STB may have additional responsibilities pursuant to 36 CFR 800 under any of the following circumstances:

1. If any consulting party requests the Advisory Council on Historic Preservation to review your findings in accordance with 36 CFR 800.5 (c) (3);



2. If the undertaking changes in ways that could affect historic properties (36 CFR 800.5 [d] [1]);
3. If previously undocumented properties are discovered during implementation of the undertaking or if a known historic property will be affected in an unanticipated manner (36 CFR 800.13);
4. If a property that was to be avoided has been inadvertently or otherwise affected (36 CFR 800.13);
5. If any condition of the undertaking, such as a delay in implementation or implementation in phases over time, may justify reconsideration of the current National Register status of properties within the undertaking's Area of Potential Effects (36 CFR 800.4[c] [1]).

Thank you again for seeking our comments on your project. If you have any questions, please contact staff historian Clarence Caesar by phone at (916) 653-8902, or by e-mail at [ccaes@ohp.parks.ca.gov](mailto:ccaes@ohp.parks.ca.gov).

Sincerely,



Dr. Knox Mellon  
State Historic Preservation Officer